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IT IS SO ORDERED.

Dated: August 16, 2010




Burton Perlman
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	
)	
Arne Scott Perttola)	Case No. 09-15773
)	
)	Adversary No. 09-1189
Debtor)	Chapter 13
)	
-----)	
)	
Margaret A. Burks, Trustee)	
)	Judge Burton Perlman
)	
Plaintiff)	
)	
vs.)	
)	
GMAC Mortgage, LLC)	
)	
)	
Defendant)	

DECISION GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
STRIKING DEFENDANT'S RESPONSE

This adversary proceeding arises in a Chapter 13 case. The adversary proceeding was commenced with a Complaint to Avoid Mortgage Lien of GMAC Mortgage. The mortgage in question is on debtor's residence (the "subject property.") The Complaint alleges that the subject property is registered land under the laws of the state of Ohio. It asserts that defendant's mortgage is subject to avoidance because it was not recorded on the Certificate of Title of the subject property. Defendant filed an answer to the Complaint, essentially a general denial.

What is now before the court is plaintiff's Motion for Summary Judgment. There is a threshold question which the court must deal with. Plaintiff's Motion for Summary Judgment was filed June 30, 2010. Accompanying the motion was Notice of Motion for Summary Judgment. That Notice stated that defendant had 21 days to respond to the motion. Further, F.R.B.P. 7056(c)(1)(B) mandates that "a party opposing the motion must file a response within 21 days after the motion is served...". No response was filed by defendant to plaintiff's motion until August 10, 2010, a date long past that required by notice and by rule. The response (Doc. 13.) is therefore ordered stricken from the files.

In her motion for summary judgment, plaintiff-trustee is asserting her avoidance powers under 11 U.S.C. § 554, commonly known as embodying the trustee's strong arm powers. These are extended to avoidance under state law by § 544(b). It is the law in the State of Ohio that any lien against registered land is invalid if it is not recorded on the Certificate of Title. Defendant's lien was not so recorded, and is therefore avoidable by plaintiff. Bavely v. Huntington National Bank et al. (In re Cowan), 273 B.R. 98 (6th Cir. BAP 2002).

Though we have stricken defendant's late filed response to the motion, we make the

following observations. First, defendant takes no issue with the facts upon which plaintiff's motion for summary judgment is based. Second, defendant does take issue with the fact that the same attorney, who filed the bankruptcy case on behalf of debtor, is now also representing the trustee as plaintiff in this adversary proceeding. Defendant raises various questions based on this fact. All, however, are without merit because counsel for plaintiff in this adversary proceeding was appointed by court order, as special counsel to the Chapter 13 trustee on the application of the Chapter 13 trustee. (Doc. 33.)

In view of the foregoing discussion, plaintiff's motion for summary judgment will be granted.

Copies to:

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